

*Not To Be Published:*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENT S. ROBINSON,

Defendant.

Criminal Case No. 09-00031

**ORDER REGARDING  
DEFENDANT'S MOTION FOR  
CHANGE OF VENUE**

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This criminal case comes before me, as a visiting judge,<sup>1</sup> on the *pro se* defendant's Motion For Change of Venue (docket no. 47), seeking a change of venue to the District of Columbia.

## ***I. INTRODUCTION***

### ***A. Charges And Trial Date***

On December 10, 2009, an Indictment (docket no. 1) was returned charging defendant Kent Sebastian Robinson with offenses arising from his alleged making and possessing of a counterfeited and forged document, namely, a Secured Funding and Offset Bond (Offset Bond), purportedly registered with the United States Department of Treasury with the number RA 153-081-658 US, which declared its value to be \$200 million dollars, paid to the order of the Oceania Insurance Corporation (Oceania), a company registered and doing business in the Commonwealth of the Northern Mariana Islands (CNMI), and which falsely purported to be, *inter alia*, offset by a “deposit private offset with the U.S. Department of Treasury.” Indictment, ¶ 1. On or about December 18, 2008, Robinson allegedly sent, or caused to be sent via interstate commercial carrier, the Offset Bond to

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<sup>1</sup>Chief United States District Court Judge Alex R. Munson of the District of the Northern Mariana Islands stepped down as an active judge on February 28, 2010, and is now a senior judge. Like several other United States District Court judges from around the nation, I sat as a visiting judge in Saipan—in my case, for two weeks in mid-April—to assist with the timely processing of court business until a successor to Chief Judge Munson is appointed. During my initial visit, I addressed the improper pretrial detention of the *pro se* defendant. *See United States v. Robinson*, \_\_\_ F. Supp. 2d \_\_\_, 2010 WL 1857348 (D. N. Mar. I. May 11, 2010). I will also sit as a visiting judge in Saipan in November 2010. This case was briefly reassigned to another judge, but has been reassigned to me.

Oceania in the CNMI, whereupon it was submitted to the CNMI Insurance Commissioner in furtherance of an alleged fraud upon that agency. *Id.* at ¶ 2.

The specific charges arising from these circumstances are the following:

**Count 1** charges Robinson with “fraudulent uttering of a private security.” More specifically, **Count 1** charges that, on or about December 19, 2008, defendant Robinson, in the District of Columbia, the District of the Northern Mariana Islands, and elsewhere, made, uttered, and possessed a counterfeit and forged security of an organization, with the intent to deceive another person, organization, or government, specifically, by making, uttering, and possessing the counterfeited Offset Bond, with the intent to deceive Oceania and the government of the CNMI, in violation of 18 U.S.C. §§ 513(a) and 2.

**Count 2** charges Robinson with “making and uttering a fictitious obligation.” More specifically, **Count 2** charges that, on or about December 19, 2008, defendant Robinson, in the District of Columbia, the District of the Northern Mariana Islands, and elsewhere, with the intent to defraud, produced and otherwise made, or caused to be made, and passed, uttered, offered, brokered, and issued, or caused the same, and with like intent possessed, and utilized interstate commerce to transfer a false or fictitious instrument appearing, representing, or purporting to be an actual security or other financial instrument issued under the authority of the United States, in violation of 18 U.S.C. §§ 514(b) and 2.

**Count 3** charges Robinson with “mail fraud.” More specifically, **Count 3** charges that, on or about December 19, 2008, in the District of Columbia and the District of the Northern Mariana Islands, having devised a scheme and artifice to defraud, and for the purpose of obtaining money or property by means of false or fraudulent pretenses and representations, Robinson delivered the Offset Bond or caused it to be delivered by a commercial interstate carrier according to the direction thereon to the District of the

Northern Mariana Islands via interstate commercial carrier, in violation of 18 U.S.C. §§ 1341 and 2.

Robinson was arrested on the charges in the District of Columbia and, after an identity hearing, was eventually brought to the CNMI to face the charges. At Robinson's initial appearance in Saipan on March 22, 2010, the court determined, *inter alia*, that Robinson is indigent, that he wished to represent himself, and that appointment of standby counsel was appropriate, notwithstanding Robinson's objections. Robinson has represented himself, with the assistance of standby counsel, in all further proceedings. Robinson's trial was originally set to begin on May 17, 2010, *see* Order (docket no. 7), but was later continued to August 9, 2010, upon a finding that time should be excluded under the Speedy Trial Act to allow defendant Robinson to prepare his defense. *See* Order (docket no. 38). Trial was continued again to November 9, 2010. *See* Order (docket no. 63).

### ***B. Motion For Change of Venue***

On June 24, 2010, Robinson filed his Motion For Change Of Venue (docket no. 47). In that motion, Robinson asserts that the current venue is prejudicial and inconvenient for him and the witnesses in the case and moves to transfer venue of this case, pursuant to Article III and the Sixth Amendment to the United States Constitution, as well as Federal Rules of Criminal Procedure 18 and 21, to the District of Columbia. Robinson represents that he has lived his entire life in the Washington D.C. area and that almost all of the principal witnesses are located in the continental United States. The prosecution filed a timely response to Robinson's motion on July 2, 2010. The prosecution argues that venue is proper in the United States District Court of the Northern Mariana Islands and that the interests of justice weigh in favor of keeping venue there as well. The

prosecution, however, concedes that the balance of interests here only slightly weighs in favor of venue in the CNMI. On July 13, 2010, Robinson filed a reply brief in which he concedes that venue is proper in the CNMI, but maintains that the majority of the ten factors identified by the United States Supreme Court in *Platt v. Minnesota Mining & Mfg. Co.*, 376 U.S. 240, 243-244 (1964), weigh in favor of transferring venue to the District of Columbia.

The court held an evidentiary hearing, via video teleconference, on the motion on July 26, 2010, at which Assistant United States Attorney Eric O'Malley represented the prosecution, and defendant Robinson was present in person with his stand-by attorney, Bruce Berline.

## ***II. LEGAL ANALYSIS***

### ***A. Change Of Venue***

Article III of the United States Constitution requires that “[t]he Trial of all Crimes . . . shall be held in the State where the said Crimes shall have been committed.” U.S. CONST. art. III, § 2, cl. 3. This directive is “reinforced by the Sixth Amendment’s requirement that ‘[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.’” *United States v. Rodriguez-Moreno*, 526 U.S. 275, 278 (1999). As noted above, Robinson concedes that venue of this case is proper in the CNMI but seeks to have it transferred under Federal Rule of Criminal Procedure 21(b).<sup>2</sup>

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<sup>2</sup>Robinson also seeks to have the case transferred under Federal Rule of Criminal Procedure 18. Rule 18 provides that:

(continued...)

Federal Rule of Criminal Procedure 21(b) provides that:

(b) For Convenience. Upon the defendant's motion, the court may transfer the proceeding, or one or more counts, against that defendant to another district for the convenience of the parties, any victim, and the witnesses, and in the interest of justice.

FED. R. CRIM. P. 21(b). A district court has broad discretion in ruling on a change of venue motion, and will only be reversed for an abuse of that discretion. See *United States v. Sherwood*, 98 F.3d 402, 410 (9th Cir. 1996); *United States v. Meyers*, 847 F.2d 1408, 1411 (9th Cir. 1988); *United States v. Flores-Elias*, 650 F.2d 1149, 1150 (9th Cir. 1981), *cert. denied*, 454 U.S. 904 (1982).

In *Platt v. Minnesota Mining & Mfg. Co.*, 376 U.S. 240 (1964), the Supreme Court enumerated the following ten factors that should be considered by a court in deciding whether to transfer a case:

(1) location of [the] . . . defendant; (2) location of possible witnesses; (3) location of events likely to be in issue; (4) location of documents and records likely to be involved; (5) disruption of defendant's business unless the case is transferred; (6) expense to the parties; (7) location of counsel; (8) relative accessibility of [the] place of trial; (9) docket

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<sup>2</sup>(...continued)

Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed. The court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice.

FED. R. CRIM. P. 18. Rule 18, however, applies to intradistrict transfers of venue and is inapplicable where, as here, the defendant is seeking an interdistrict transfer of venue. See *United States v. Lipscomb*, 299 F.3d 303, 340 (5th Cir. 2002).

condition of each district . . . involved; and (10) any other special elements which might affect the transfer.

*Id.* at 243-44 (quotation omitted). Although the Ninth Circuit Court of Appeals has cited the *Platt* factors with approval in deciding Rule 21(b) transfer motions, *see United States v. Testa*, 548 F.2d 847, 856-57 (9th Cir. 1977); *United States v. Polizzi*, 500 F.2d 856, 900 (9th Cir. 1974), *cert. denied*, 419 U.S. 1120 (1975), there is little Ninth Circuit case law providing guidance on the application of the *Platt* factors. Therefore, the court will look to case law from the other circuits for guidance in analyzing the facts in this case in terms of the *Platt* factors.

"No one of [the *Platt*] considerations is dispositive, and '[i]t remains for the court to try to strike a balance and determine which factors are of greatest importance.'" *United States v. Maldonado-Rivera*, 922 F.2d 934, 966 (2d Cir. 1990) (quoting *United States v. Stephenson*, 895 F.2d 867, 875 (2d Cir. 1990)); *see United States v. Morrison*, 946 F.2d 484, 490 n.1 (7th Cir. 1991) (quoting *Maldonado-Rivera*, 922 F.2d at 966); *see also United States v. The Spy Factory*, 951 F. Supp. 450, 455 (S.D.N.Y. 1997) (finding that "[a] Court should not give any one factor preeminent weight nor should it assume that the quantity of factors favoring one party outweighs the quality of factors in opposition."). In determining the propriety of transfer, a court must decide which of these factors support transfer and which do not and then determine whether transferring of the case is warranted. *See In re United States*, 273 F.3d 380, 387 (3rd Cir. 2001) ("A balance should be struck among the most important factors in the particular case to determine whether transfer is appropriate."). While the burden proof is on Robinson, "the defendant is not required to show 'truly compelling circumstances for . . . change . . . [of venue, but rather that] all relevant things considered, the case would be better off transferred to another district.'" *In re United States*, 273 F.3d at 387 (quoting *In re Balsimo*, 68 F.3d

185, 187 (7th Cir. 1995)); *see United States v. Balsiger*, 644 F. Supp.2d 1101, 1121 (E.D. Wis. 2009); *United States v. Carey*, 152 F. Supp.2d 415, 422 (S.D.N.Y. 2001); *United States v. Guastella*, 90 F. Supp.2d 335, 338 (S.D.N.Y. 2000). The court will take up each of the *Platt* factors *seriatim*.

## ***B. Analysis of Platt Factors***

### ***1. Location of the defendant***

The first *Platt* factor is the location of the defendant. *Platt*, 376 U.S. at 243. Robinson is a life long resident of the Washington D.C. metropolitan area. Saipan is 7,786 miles from Washington D.C. The prosecution concedes that Robinson's residence in Washington D.C. weighs in favor of transferring the case to the District of Columbia. This factor weighs in favor of transfer because, as courts have recognized, "it can be a hardship for a defendant to face trial far away from home and from 'appropriate facilities for defense.'" *United States v. Aronoff*, 463 F. Supp. 454, 457 (S.D.N.Y. 1978) (*quoting United States v. Johnson*, 323 U.S. 273, 276 (1944)); *see United States v. Muratoski*, 413 F. Supp.2d 8,11 (D.N.H. 2005) ("[I]t is, of course, a physical, emotional, and economic hardship for this defendant to face trial in New Hampshire, far from his home [and family] in [Texas]."); *see also Spy Factory*, 951 F. Supp. at 455-56 (citing *Aronoff*, 463 F. Supp. at 457). Robinson's residence in Washington D.C., however, does not in itself entitle him to be tried in the District of Columbia. *See Platt*, 376 U.S. at 245 (noting that the defendant's residence has no "independent significance," and should not be given dispositive weight); *United States v. McManus*, 535 F.2d 460, 463 (8th Cir. 1976) ("Criminal defendants have no constitutional right to have a trial in their home districts, nor does the location of the defendant's home have 'independent significance in determining whether transfer to that district would be in the interest of justice.'" (quoting

*Platt*, 376 U.S. at 245-46) (internal quotation marks omitted). Nevertheless, given the incredible distance between Washington D.C. and the CNMI, the fact that Robinson resides in Washington D.C. weighs substantially in favor of transferring venue of this case.

## **2. *Location of witnesses***

The second *Platt* factor is the location of the witnesses. *Platt*, 376 U.S. at 244. Robinson points out that all of his defense witnesses are located in the continental United States as well as the majority of the prosecution's witnesses. Robinson maintains that he is likely to call as defense fact witnesses individuals from Florida, Texas, Nevada, New Mexico, and Indiana. Robinson also intends to call several character witnesses, all whom reside in the continental United States.<sup>3</sup> In cases involving fraud, the location and availability of character witnesses is an important consideration. *See United States v. Ferguson*, 432 F. Supp. 2d 559, 564 (E.D. Va. 2006) (fact that majority of defendant's character witnesses were located in Connecticut weighed in favor of transfer). As Justice Murphy noted over a half-century ago:

Very often the difference between liberty and imprisonment in cases where the direct evidence offered by the government and the defendant is evenly balanced depends upon the presence of character witnesses. . . . The inconvenience, expense and loss of time involved in transplanting these witnesses to testify in trials far removed from their homes are often too great to warrant their use. Moreover, they are likely to lose much of their effectiveness before a distant jury that knows nothing of their reputations.

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<sup>3</sup>Robinson does not disclose the identity or states of residence of any of his character witnesses in his briefs.

*United States v. Johnson*, 323 U.S. 273, 279 (1944) (Murphy, J., concurring). These concerns remain worthy of consideration.

Robinson also maintains that the prosecution's witnesses reside in Washington D.C., Arizona, California, Florida, Texas, Nevada, New Mexico, Indiana, and Guam, and estimates that sixteen of the prosecution's witnesses are located in the continental United States. The prosecution does not dispute this assertion, but does assert that it will call as many as four witnesses from the CNMI, as well as a case agent from Guam.<sup>4</sup> The prosecution concedes that its remaining witnesses are all located in the continental United States, including its expert witness, Matthew T. Johnson, who resides in Washington D.C. As a result, the prosecution further concedes that this factor weighs in favor of transferring the case to the District of Columbia.

Even though few witnesses reside in the Washington D.C. area, leaving venue in the CNMI will necessitate all but four witnesses to undertake extensive travels to the trial location, much more so than if venue was transferred to the District of Columbia. The court notes that travel to the CNMI carries with it special considerations. Foremost, it will necessitate witnesses travel by air outside of the United States and likely through airports in other nations. This circumstance requires that all witnesses have a passport and fully comply with other travel requirements of the United States as well as any foreign nations

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<sup>4</sup>The court notes that the prosecution's case agent's job requires him to testify in criminal prosecutions. *See United States v. Green*, 983 F.2d 100, 103 (8th Cir. 1992). Thus, because testifying is part of his job, the court finds that the case agent would not be greatly inconvenienced in having to travel to Washington D.C. to testify in this case.

traveled through to reach the CNMI. Accordingly, the court concludes that the location of the witnesses favors transferring the case to the District of Columbia.

**3. *Location of events likely to be in issue***

The events at issue in this case occurred in both the District of Columbia, where the prosecution alleges Robinson prepared the counterfeit Offset Bond, and the CNMI, where Robinson allegedly sent the counterfeit Offset Bond. Robinson argues that discovery documents indicate that the events that will be discussed in this case occurred in several locations throughout the continental United States. The charges in this case, however, center on the manufacture and passing of the counterfeit Offset Bond, events which allegedly occurred in the District of Columbia and the CNMI. Thus, this factor neither favors nor disfavors transferring the case to the District of Columbia. Therefore, this factor is inconclusive and "drops out of the equation." *United States v. Bein*, 539 F. Supp. 72, 74 (N.D. Ill. 1982).

**4. *Location of documents and records***

The documents and records in this case are all located in the CNMI. Therefore, this factor weighs against transferring the case to the District of Columbia. The court notes, however, that documents are easily transported. Moreover, because there has been no showing that the number of documents and records involved in this case is so substantial that transportation might prove problematic, the weight to be accorded this factor is slight.

**5. *Disruption of defendant's business***

The fifth *Platt* factor is "the disruption of defendant's business unless the case is transferred." *Platt*, 376 U.S. at 244. Robinson argues that he has lived and worked in the Washington D.C. area his entire life and that being forced to try this case in the CNMI is disruptive to his business. The prosecution cogently points out that Robinson does not indicate in his moving papers what "business" is being disrupted by having venue remain

in the CNMI. Robinson does not indicate what business is being disrupted and the court is unaware of any such disruption unless the case is transferred. Therefore, this factor does not weigh in favor of transferring the case to the District of Columbia.

**6. *Expense to the parties***

*Platt* explicitly calls for courts to consider the “expense to the parties,” 376 U.S. at 244. On this issue, the parties are in agreement that trial in the CNMI will involve enormous expense to the taxpayers. The prosecution concedes that this issue weighs in favor of transferring venue. Here, because Robinson is indigent, the expense of his defense will be borne by the taxpayers in addition to the prosecution costs. In considering this factor, other courts have recognized that the prosecution has “for all practical purposes, unlimited financial resources to bring to bear” in pursuing its case. *United States v. Ferguson*, 432 F. Supp. 2d 559, 567 (E.D. Va. 2006). However, this court does not take lightly the additional costs to the prosecution created by trial in the CNMI, since these costs ultimately must be borne by the taxpayers. For example, the court considers the heightened costs of airfare for witnesses if trial were to be held in the CNMI. Robinson indicates that the lowest round-trip airfare from Washington D.C. to Saipan for travel on July 26, 2010, was \$1,972, and the lowest round-trip airfare from Los Angeles to Saipan for travel the same date was \$1,533. These airfares are significantly higher than those typically charged for domestic flights within the continental United States. Given that at least four times as many witnesses reside in the continental United States than reside in the CNMI, the costs of transporting witnesses to the trial site would be lessened considerably if the trial was held in the District of Columbia. Accordingly, the court concludes that this factor also favors transferring the case to the District of Columbia.

**7. *Location of counsel***

All counsel in this case are located in the CNMI and Guam. Therefore, this factor weighs against transferring the case. The weight accorded this factor is lessened by several facts. First, the court notes that, in the event of a transfer, the prosecution would likely have support services and other resources available to them from the offices of the United States Attorney for the District of Columbia. *See United States v. Lopez*, 343 F. Supp. 2d 824, 837 (E.D. Mo. 2004). Moreover, as noted above, Robinson is representing himself with the assistance of stand-by counsel. Replacement stand-by counsel could easily be appointed for Robinson's benefit in the District of Columbia. Thus, this factor very slightly favors not transferring venue.

**8. *Relative accessibility of place of trial***

Robinson asserts that the District of Columbia is more accessible than the CNMI. The prosecution concedes that this factor weighs in favor of transferring venue. The District of Columbia is serviced by three major international airports, Ronald Reagan Washington National Airport ("DCA"), Washington Dulles International Airport ("IAD"), and Baltimore/Washington International Thurgood Marshall Airport ("BWI"). DCA serves 15 airlines of which eleven carriers have nonstop services to 76 domestic destinations. *See* About Reagan National Airport, Metropolitan Washington Airports Authority, at <http://www.metwashairports.com/reagan/210.htm> (last visited July 14, 2010). IAD serves 35 airlines of which ten carriers have nonstop services to 83 United States destinations. *See* About Washington Dulles International Airport, Metropolitan Washington Airports Authority, at <http://www.metwashairports.com/dulles/208.htm> (last visited July 14, 2010). BWI serves 14 airlines of which ten carriers have nonstop services to 66 domestic destinations. *See* Baltimore/Washington International Thurgood Marshall Airport, at <http://www.bwiairport.com/en/flight/nonstop-flights> (last visited July 15,

2010). The prosecution points out that Saipan International Airport (“SPN”) has several flights arriving daily, but recognizes that all flights are very expensive. SPN is serviced by five major international airlines. *See* Saipan International Airport, Commonwealth Ports Authority, at <http://cpa.gov.mp/spnat.asp> (last visited July 14, 2010). Thus, the court concludes while both districts are accessible to the parties, counsel, and witnesses, as between the District of Columbia and the CNMI, the District of Columbia is the more accessible of the two venues. Accordingly, this factor favors transferring the case to the District of Columbia.

**9. *Docket conditions of each district***

Robinson and the prosecution agree this factor weighs against transferring given that the docket for the District of Columbia is more congested than the docket in the CNMI. Robinson demonstrates this by utilizing reports on judicial caseloads, published by the Administrative Office of the United States Courts. The court agrees that the docket in the District of Columbia is more congested than that in the CNMI. However, a number of courts have held that since the adoption of the Speedy Trial Act of 1974, the relative conditions of the courts’ dockets are of minimal significance. *See United States v. Balsiger*, 644 F. Supp.2d 1101, 1126 (E.D. Wis. 2009); *United States v. Radley*, 558 F. Supp.2d 865, 882-83 (N.D. Ill. 2008); *United States v. Ringer*, 651 F. Supp. 636, 640 (N.D. Ill. 1986); *United States v. Bein*, 539 F. Supp. 72, 75 (C.D. Ill. 1982). Nonetheless, there is no evidence suggesting that the docket conditions of either forum compel the transfer of this case. Accordingly, the court finds that this factor does not weigh in favor of transfer.

**10. *Special elements***

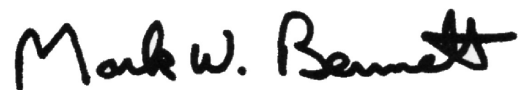
Neither party has cited any “special elements” that might militate in favor of (or against) the requested transfer. Thus, this factor neither favors nor disfavors transferring the case to the District of Columbia.

### ***III. CONCLUSION***

Upon weighing the ten *Platt* factors, the court concludes that four of the ten (location of defendant, location of witnesses, expense to the parties, and relative accessibility of place of trial) support transfer; four factors (location of documents and records, disruption of defendant’s business, location of counsel, and docket condition) weigh against transfer; and the remaining two (location of events likely to be at issue and special elements ), provide no support for either position. Although it might be appealing to simply tally the factors as a 4-4 tie and determine that in the event of a tie a transfer is not required, Rule 21(b) requires a more exacting balance. In particular, the court finds that the location of the defendant and the witnesses, and the expense to the parties all weigh substantially in favor of transferring the case to the District of Columbia. On the other hand, three of the factors against transfer, location of counsel, location of documents and records, and disruption of defendant’s business, do so only weakly. Accordingly, the court finds that Robinson has met his burden under Rule 21(b). Defendant Robinson’s Motion For Change of Venue is therefore **granted** and the Clerk of Court is ordered to transfer this case to the United States District Court For the District of Columbia. The court’s trial management order filed July 15, 2010 (docket no. 63) is vacated.

**IT IS SO ORDERED.**

**DATED** this 29th day of July, 2010.

  
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MARK W. BENNETT  
U. S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA